

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

J'KENDRIC JIRELLE AGEE,

Plaintiff,

9:19-cv-00057 (BKS/ATB)

v.

TROY MITCHELL, et al.,

Defendants.

Appearances:

Plaintiff, pro se:

J'kendric Jirelle Agee
Niagara Falls, NY

For Defendants:

Letitia James
Attorney General for the State of New York
Aimee Cowan
300 South State Street
Suite 300
Syracuse, NY 13202

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff J'kendric Jirelle Agee, a former New York State inmate proceeding pro se, commenced this civil rights action under 42 U.S.C. § 1983 asserting claims arising out of his incarceration at the Auburn Correctional Facility and Cayuga County Jail. (Dkt. No. 14). On January 2, 2020, Defendant Keith Vincent filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. (Dkt. No. 46). Plaintiff did not file a response. Defendant Vincent filed a letter in further support of the motion on February 3, 2020. (Dkt. No. 52). This matter was referred to United States Magistrate Judge Andrew T.

Baxter who, on March 23, 2020, issued a Report-Recommendation recommending that Defendant's motion to dismiss be denied. (Dkt. No. 54). Magistrate Judge Baxter advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 54, at 8–9). No objections have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is


ORDERED that the Report-Recommendation (Dkt. No. 54) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendant Vincent's motion to dismiss (Dkt. No. 46) is **DENIED**; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: April 20, 2020
Syracuse, New York


Brenda K. Sannes
U.S. District Judge